

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 154, 2015**

Issued by the authority of the Minister for Industry and Science

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies)  
Regulations 2004*

*Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations)  
Regulation 2015*

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) provides the legal framework for the exploration for and recovery of petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas. Section 781 of the OPGGS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the OPGGS Act.

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Regulatory Levies Act) imposes well-related levies on the registered holders of offshore petroleum titles, including annual well levy and well activity levy. Well-related levies are collected by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) – the regulator of well integrity for the offshore petroleum industry. Amounts of levy collected are used to fund NOPSEMA's operations on a cost-recovery basis. Section 11 of the Regulatory Levies Act provides that the Governor-General may make regulations for the purposes of a number of sections of the Regulatory Levies Act, including sections 10A, 10B, 10C and 10D, which impose levies with respect to wells in relation to Commonwealth titles and State/Northern Territory titles respectively.

Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* ('Part 5 of the Principal Regulations' or 'the Wells Regulations') provides the regulatory framework for offshore wells and well activities in Commonwealth waters. The *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015* (the Regulation) amends the Principal Regulations to implement the outcomes of a review of the Wells Regulations.

The exploration for and production of hydrocarbons from under the seabed is susceptible to rare but potentially serious incidents. An example was the Montara Wellhead Platform incident in 2009, which resulted in an uncontrolled release of oil and gas into the Timor Sea. This incident and the subsequent Montara Commission of Inquiry, as well as the need to periodically review the effectiveness of the regulatory system for offshore wells, led to a review of Part 5 of the Principal Regulations. The objectives of the Review were to ensure that the regulation of the integrity of offshore petroleum and greenhouse gas storage wells and well activities in Commonwealth waters reflects leading practice and objectives-based regulation.

The Regulation amends the Wells Regulations to implement the findings of the Review, including:

- Ensuring that the remit of the regulatory regime encompasses the entire life of a well and not just standalone well activities;
- Ensuring that the well operations management plan (WOMP) becomes the sole permissioning document for the well and well activities, so that individual well activity approvals are no longer required. Well activity approvals are instead replaced with a well activity notification scheme;
- Increasing consistency, where appropriate, between the regulatory processes under the Wells Regulations and the processes set out in the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, to improve clarity and reduce regulatory burden for titleholders; and
- Allowing flexibility for industry in how it achieves compliance, and ensuring that regulation is able to adapt to changing technology and innovation, by maintaining an objectives-based approach to regulation.

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (Regulatory Levies Regulations) prescribe matters necessary to enable the full and effective collection of well-related levies imposed on titleholders by the Regulatory Levies Act, including prescription of how levies are calculated. The Regulation also amends the Regulatory Levies Regulations to make consequential amendments as a result of the proposed amendments to Part 5 of the Principal Regulations, and other minor technical amendments.

Details of the Regulation are set out in [Attachment 1](#). The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on 1 January 2016. The delayed commencement will provide titleholders with additional time to understand and prepare to comply with the requirements before the amendments come into force. It will also enable time for consideration and implementation of appropriate revisions to levy arrangements to ensure full cost-recovery for NOPSEMA following the removal of the requirement for approval to undertake certain well activities (and associated reduction in receipt of well activity levy).

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility is set out in [Attachment 2](#).

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation. OBPR advised that no regulatory impact analysis was required to be undertaken in relation to the amendments to implement the review of the Wells Regulations.

### Consultation

In conducting the review of the Wells Regulations and the subsequent drafting of amendments, extensive consultation was undertaken with key stakeholders, including NOPSEMA and offshore petroleum industry stakeholders, principally through the Australian Petroleum Production and Exploration Association (APPEA – the key industry association).

In January 2014, the former Department of Industry published an Issues Paper which identified policy, legal and operational issues impacting the regulation of offshore wells. The Issues Paper was released for public consultation, with submissions sought between 31 January and 28 March 2014. Consultation sessions were held in Perth on 24 and 25 February 2014, and in Melbourne on 26 February 2014. Industry stakeholders were made aware of the publication of the Issues Paper and the consultation sessions through the department's occasional newsletter – Australian Petroleum News. The department received 10 submissions on the Issues Paper.

In consideration of the Issues Paper and the submissions received, the department developed a Policy Framework which articulated the Government's position on and desired policy outcomes for the Wells Regulations. The department conducted a three week period of public consultation on the Policy Framework from 5 November to 26 November 2014, during which the department received 6 submissions. The department subsequently finalised the Policy Framework, taking into account the submissions received during consultation. The Policy Framework was used as the basis to develop drafting instructions for the amendments to the Wells Regulations.

An Exposure Draft of the Regulation was published on the department's website in March 2015. Public submissions on the Exposure Draft were sought between 19 March and 30 April 2015. During this period, two public consultation sessions were held in Perth on Wednesday 25 March and Thursday 26 March 2015. Industry stakeholders were again made aware of the publication of the Exposure Draft and the consultation sessions through the Australian Petroleum News. The department received 2 submissions on the Exposure Draft.

Several revisions have been made to the Regulation as a result of feedback received during consultation on the Exposure Draft, and further extensive consultation with NOPSEMA and the offshore petroleum industry (principally through APPEA) was undertaken following the period of formal consultation. For example, feedback from industry stakeholders suggested that the initial transitional arrangements proposed (including a 12 month period to submit a revised WOMP) would be unduly onerous given the need for time to understand the amended requirements. As a result of this feedback, the overall transition period was extended to a period of 24 months, and a delayed commencement also implemented to give industry and NOPSEMA additional time to understand and prepare for the amended requirements.

As another example, industry stakeholders also suggested that the 21 day timeframe for notification of certain well activities before commencing that activity that was initially proposed could result in costly delays to petroleum activities, and may not be necessary for lower risk activities in order to achieve intended regulatory outcomes. As a result of this feedback, the timing for notification of some activities was reduced so that notification must only be made at any time before commencement of the activity (e.g. the activity could be notified and commenced on the same day). For those activities for which a 21 day notification timeframe is still required, the Regulator can agree with the titleholder a shorter timeframe for notification if required.

**Details of the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015***

Section 1 – Name

This section provides that the title of the proposed Regulation is the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 January 2016. The delayed commencement will provide titleholders with additional time to understand and prepare to comply with the amended requirements before the amendments come into force. It will also enable time for consideration and implementation of appropriate revisions to levy arrangements to ensure full cost-recovery for NOPSEMA following the removal of the requirement for approval to undertake certain well activities (and associated reduction in receipt of well activity levy).

Section 3 – Authority

This section provides that the Regulation is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Regulatory Levies Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*

**Items [1] to [6] – Regulation 48 (definition of *transitional year*); Subregulation 49(1); Subregulations 49(2) and 50(3); Regulation 51 (definition of *transitional year*); Subregulation 52(1); Subregulations 52(2) and 53(3)**

These items amend Parts 8 and 9 of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (Regulatory Levies Regulations), which provide for the amounts of annual well levy imposed under the Regulatory Levies Act, to remove provision for the amount of annual well levy imposed for the ‘transitional year’. The transitional year commenced on 17 June 2011 and ended on 31 December 2011. It is therefore no longer necessary to include provisions to deal with the transitional year.

### **Item [7] – Regulation 54**

This item inserts a definition of “old Resource Management and Administration Regulations” in Part 10 of the Regulatory Levies Regulations, which deals with well activity levy imposed under the Regulatory Levies Act in relation to Commonwealth petroleum titles. This new term is used in other amendments made by the Regulation – see items 8 and 9.

### **Item [8] – At the end of regulation 55**

Regulation 55 of the Regulatory Levies Regulations sets out the amount of well activity levy imposed on an application for approval to commence an activity relating to a well. As a result of amendments made by the Regulation, the requirement for titleholders to obtain approval to commence a well activity has been repealed – see item 49. However, the requirement for a titleholder to obtain approval will be kept in force under transitional arrangements until the titleholder has had a revised WOMP accepted under the Wells Regulations as amended by the Regulation – see item 54 (new paragraph 5.31(3)(b)).

This item therefore inserts a note to inform the reader that an application for approval to commence an activity relating to a well is made under regulation 5.23 of the Principal Regulations as in force before the commencement of the Regulation, as kept in force under the relevant transitional provisions.

### **Item [9] – Paragraph 56(2)(b)**

This item amends paragraph 56(2)(b) to ensure the continuing validity of that paragraph after the commencement of amendments made by the Regulation that will repeal the requirement for titleholders to obtain approval to commence a well activity. The requirement to obtain approval will be temporarily kept in force under transitional arrangements (see discussion under item 8), and therefore imposition of well activity levy on applications for approval to commence an activity relating to a well will continue during the transition period. New paragraph 56(2)(b) therefore refers to an application for approval to commence an activity relating to a well under regulation 5.23 of the Principal Regulations as in force before the commencement of the Regulation, as kept in force under the relevant transitional provisions.

### **Item [10] – Regulation 57**

This item inserts a definition of “old Resource Management and Administration Regulations” in Part 11 of the Regulatory Levies Regulations, which deals with well activity levy imposed under the Regulatory Levies Act in relation to State/Territory petroleum titles where relevant functions and powers have been conferred on NOPSEMA. This new term is used in other amendments made by the Regulation – see item 11.

### **Item [11] – Paragraph 59(2)(b)**

This item amends paragraph 59(2)(b) to ensure the continuing validity of that paragraph after the commencement of amendments made by the Regulation that repeal the requirement for titleholders to obtain approval to commence a well activity – see item 49. New paragraph 59(2)(b) refers to an application for approval to commence an activity relating to a well under a regulation of a State or Territory that substantially corresponds to regulation 5.23 of the Principal Regulations as in force *before* the commencement of the Regulation. It is anticipated that the States and Northern Territory will amend their respective regulations to ensure ongoing substantial correspondence with the Commonwealth regulations, in particular where a State or Territory has conferred functions and powers in relation to the structural integrity of wells on NOPSEMA.

*Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*

### **Item [12] – Regulation 1.04 (heading)**

This item repeals the current heading to regulation 1.04 and substitutes it with a new heading: ‘Objects of Parts 2 to 4 and 6 to 13’. A new object of Part 5 of the Principal Regulations is inserted by item 15 – see items 13 to 15.

### **Item [13] – Subregulations 1.04(1) and (2)**

This item ensures that the objects set out in subregulations 1.04(1) and (2) apply only to Parts 2 to 4 and 6 to 13 of the Principal Regulations. As the Wells Regulations are located within Part 5 of the Principal Regulations, the general resource management-related objects set out in regulation 1.04, including concepts of ensuring ‘optimum long-term recovery of petroleum’ and carrying out operations in accordance with ‘good oilfield practice’, previously also applied to the Wells Regulations. There were no objects that were expressed to apply specifically in relation to the Wells Regulations.

Despite being located within the Principal Regulations, the Wells Regulations are solely concerned with the regulation of the integrity of wells and well activities by NOPSEMA with respect to petroleum and the responsible Commonwealth Minister with respect to greenhouse gas. Integrity in this context refers to the capacity of a well to contain substances. The concepts of ‘optimum long-term recovery of petroleum’ and ‘good oilfield practice’ are therefore not appropriate as objects of the Wells Regulations. The concepts are largely directed towards the economic optimisation of recovery of resources, whereas the Wells Regulations are intended to ensure that everything reasonably practicable will be done to reduce risks to the integrity of wells and well activities.

Therefore, item 13 disapplies the general regulatory objects of the Principal Regulations from Part 5. A new stand-alone object for Part 5 that is specific to the regulation of wells and which makes the difference in regulatory objects explicit is inserted into the Principal Regulations – see item 15. The new object of Part 5 is solely concerned with the maintenance of well integrity by ensuring well integrity risks are reduced to as low as reasonably practicable.

### **Item [14] – Subregulation 1.04(3)**

This item ensures that the objects set out in subregulation 1.04(3) apply only to Parts 2 to 4 and 6 to 13 of the Principal Regulations. See discussion under item 13.

### **Item [15] – After regulation 1.04**

This item inserts a new regulation 1.04A which provides a new object specific to Part 5 of the Principal Regulations (the Wells Regulations). By explicitly defining the independent object of the Wells Regulations, this makes it clear that there is a distinction between the object of that Part, and the objects of the remainder of the Principal Regulations.

The new object of Part 5 refers to the concept of reducing risks to well integrity to ‘as low as reasonably practicable’ (ALARP). The ALARP principle is an established international benchmark, and it is used consistently across the Commonwealth offshore petroleum regulatory regime; for example, the ALARP concept is central to the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Safety Regulations) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Environment Regulations). In practice, the concept of reducing risks to ALARP operates so that titleholders who undertake oil and gas activities are required to show, through reasoned and evidence-based arguments, that there are no other practicable measures that can reasonably be taken to reduce risks further. The ALARP principle will apply at all stages of the life of a well, including design and construction for example, to ensure the ultimate object of the maintenance of well integrity. Further, the WOMP content requirements ensure that the steps taken to reduce risks to ALARP at all stages, including, expressly, design and construction, up to permanent abandonment, must be included in a WOMP and assessed by the Regulator.

The use of the ALARP principle reflects the ‘objectives-based’ nature of the offshore petroleum regulatory regime. Rather than providing a prescriptive regime setting out specifically and precisely what titleholders are required to do to achieve regulatory compliance, the amendments made by the Regulation ensure that the titleholder, as the creator of the risk, is responsible for evaluating and managing the risk and reducing risk to ALARP. The application of ALARP to offshore petroleum operations also allows the titleholder to adopt practices and technologies best suited to individual circumstances, activities and locations. ALARP will also encourage the titleholder to adopt new processes and technologies as they emerge.

Given that there is now a separate object that applies only to the well-related regulations in Part 5 of the Principal Regulations, and that those regulations apply to well integrity rather than resource management, further consideration will be given to separating out the well-related regulations from the Principal Regulations into a stand-alone set of regulations when the opportunity arises.

### **Item [16] – Regulation 1.05 (definition of *accepted well operations management plan*)**

This item repeals the definition of an “accepted well operations management plan”. See discussion at item 20.

### **Item [17] – Part 5 (heading)**

This item substitutes the current heading of Part 5 (“Well operations management plans and approval of well activities”) with a new heading: “Well operations management plans and well activities”. Removing the reference to approval of well activities aligns with one of the key amendments made by the Regulation. Under the Principal Regulations, titleholders were required to seek approval from the Regulator before commencing certain well activities. The amendments made by the Regulation instead make the WOMP the sole permissioning document for the entire life of the well. See discussion at item 49.

### **Item [18] – Regulation 5.01**

This item makes current regulation 5.01 into subregulation 5.01(1), as a result of the insertion of a new subregulation 5.01(2). See item 19.

### **Item [19] – At the end of regulation 5.01**

This item excludes wells drilled for the purpose of geotechnical drilling or construction of a facility from the operation of Part 5 of the Principal Regulations. Wells drilled for these purposes are excluded because they involve shallow wells which carry low risks relative to the scope and object of the Wells Regulations in Part 5, and therefore do not require the same level of regulatory oversight.

### **Item [20] – Regulation 5.02**

This item inserts a definition of “facility” into regulation 5.02 of the Principal Regulations. A reference to the operator of a facility is included in the new Division 7 on information about specific well activities under subregulation 5.22(4) (see item 49).

This item also inserts a definition of “in force”, in relation to a WOMP, into Part 5. A WOMP is in force once it has been accepted by the Regulator, but ceases to be in force if acceptance of the WOMP is withdrawn by the Regulator under Division 6, or the operation of the WOMP ends under new Division 5. Similarly, a revised WOMP is in force once the proposed revision has been accepted by the Regulator.

The term “in force” is now the single term used in the Wells Regulations to encompass when a WOMP is active, and replaces various terms previously used within the Wells Regulations, such as “accepted well operations management plan” or the date on which a WOMP “commences”. By introducing only one term to describe when a WOMP is active, the Regulation therefore provides greater consistency and clarity for titleholders.

### **Item [21] – Regulation 5.02 (definition of *integrity*)**

This item repeals the previous definition of “integrity”, for a well, and replaces it with a new definition.

The previous definition referred specifically to the “potential producing or injection zone in the well bore”; however this potentially excluded other parts of the well in relation to which integrity should be required to be maintained. It also referred to the containment of “reservoir fluids”, which may have inappropriately limited the types of fluids that should be required to be contained (it should include, for example, liquids or gasses being extracted or injected, drilling fluids, and water). The previous definition was also different from the closely related definition of “structural integrity” in section 7 of the OPGGS Act.

The new definition refers to the capacity of a well to contain petroleum, a greenhouse gas substance, or any other substance. This provides a clear link to paragraph (g) of the definition of “structural integrity” in the OPGGS Act. It also broadens the types of fluids that a well should have the capacity to contain, in order to ensure that integrity is achieved and maintained. “Any other substance” includes substances in the well, including (but not limited to) drilling or formation fluids.

The reference to the *capacity* of the well to contain substances ensures that any planned releases of substances, in controlled circumstances as part of normal industry practice, are not characterised as a lack of integrity. This could include releases which are part of the designed process, e.g. automatic release via a blowdown system or venting system. In this circumstance substances are still *able* to be contained, but controlled releases are occurring as part of normal operations. However, where an intentional release, which is considered a safe operation, escalates to the extent where immediate actions in addition to the normal arrangements for safe operation result either automatically or are required by manual intervention to reduce risks, the well could not be said to have capacity to contain substances (i.e. the well does not have integrity).

### **Item [22] – Regulation 5.02**

This item inserts a definition of “operator” into regulation 5.02 of the Principal Regulations. A reference to the operator of a facility is included in the new Division 7 on information about specific well activities under subregulation 5.22(4) (see item 49).

This item also inserts a definition of “reportable incident” into regulation 5.02 of the Principal Regulations. This definition supports other amendments to the Wells Regulations that insert stand-alone notification, reporting and recording requirements on titleholders in relation to reportable incidents (see item 49 – new Division 8). The definition eliminates duplication with the Safety Regulations and clarifies the categories of events that compromise the integrity of a well which should be notified and reported to the Regulator and subsequently recorded by the titleholder. Furthermore, the new definition aligns more closely with global process safety and leading indicators reporting.

For example, under the OPGGS Act and Safety Regulations, a facility operator is required to notify and provide a report to NOPSEMA about a well kick exceeding 8 cubic metres or 50 barrels. Under the amended Wells Regulations, a titleholder is required to notify and provide a report to the Regulator about a well kick exceeding 1 kilogram of gas or 80 litres of liquid. The lower threshold for a titleholder to notify and report a well kick under the Wells Regulations reflects that a well kick could be an indication of an issue, or potential issue, with the integrity of the well, which could lead to a more serious well-related incident if remedial action is not taken. The titleholder is the person with ultimate responsibility for wells and well operations. By contrast, the operator of a facility, such as a platform, has occupational health and safety (OHS) responsibility for the safety of people on board the facility, but will not necessarily have a significant amount of control over the manner in which well operations are undertaken. The operator’s statutory OHS responsibility is the protection of people on the facility from risks emanating from the well. The operator’s responsibility will vary according to how much control over the conduct of the well operations the operator actually has. This is because under the Safety Regulations, the operator is required to take all reasonably practicable steps to ensure the safety of people on board. What steps are ‘reasonably practicable’ for the operator will depend on the extent and kind of involvement in the well operations the operator has in each case under contractual arrangements with the titleholder.

Paragraph (c) of the definition refers to damage to, or failure of, well-related equipment. The term ‘well-related equipment’ is defined in section 7 of the OPGGS Act as any plant, equipment, or other thing, for containing pressure in a well. Accordingly, this paragraph of the definition only requires a titleholder to notify and report to the Regulator information about damage to, or a failure of, plant, equipment or another thing that is used for containing pressure in a well that has led, or could lead, to a loss of well integrity. It is not a broad reference to *any* equipment that could be said to be related to a well. An example of damage or a failure that would fall within paragraph (c) is the failure of a well control barrier, such as the hydrostatic pressure of a fluid column, as a well control barrier is something used for containing pressure in a well. See also item 26.

#### **Item [23] – Regulation 5.02 (definition of *well*)**

This item repeals the previous definition of “well” and substitutes a new definition so that the meaning of “well”, for the purposes of the Wells Regulations, is affected by new regulation 5.03 – see item 26.

#### **Item [24] – Regulation 5.02 (examples at the end of the definition of *well activity*)**

This item repeals the examples of “well activity”. Removal of the examples will avoid potentially unduly restricting the types of activity that are considered to be a “well activity”.

#### **Item [25] – Regulation 5.02 (definition of *well integrity hazard*)**

This item repeals the definition of “well integrity hazard”. The amendments made by the Regulation focus on reducing risks to well integrity to as low as reasonably practicable, as set out explicitly in the new object of Part 5 – see item 15. It is therefore no longer considered necessary to refer to the concept of a well integrity hazard within the Wells Regulations.

#### **Item [26] – Regulation 5.03**

Regulation 5.03 of the Principal Regulations previously stated that, for paragraph 638(1)(h) of the OPGGS Act, Part 5 of the Principal Regulations is a listed OHS law to the extent it relates to occupational health and safety. That regulation is repealed by this item. This is because regulation 5.03 duplicates paragraph 638(1)(e) of the OPGGS Act, which itself already provides that Part 5 of the Principal Regulations is a listed OHS law to the extent to which the Part relates to occupational health and safety. This means that NOPSEMA inspectors carrying out OHS inspections under Schedule 3 to the OPGGS Act will continue to be able to inspect for compliance with the Wells Regulations to the extent that the Regulations relate to occupational health and safety.

This item also inserts a new regulation 5.03, to affect the meaning of “well” for the purposes of the Wells Regulations – see also item 23. The new regulation ensures that a reference to a “well” includes a reference to well-related equipment associated with the well. In this context “well-related equipment”, as set out in section 7 of the OPGGS Act, is any plant, equipment or other thing for containing pressure in a well. This includes, for example, a barrier that is used to control pressure in the well. The term therefore does not extend to *any* equipment that could be said to be related to a well; it is only equipment that is used for the purpose of containing pressure in a well.

Expanding the definition of “well” to include well-related equipment ensures that the scope of a WOMP includes information about all equipment that is used to contain pressure in a well in order to reduce risks to well integrity to as low as reasonably practicable, and demonstrates the suitability of the equipment for this purpose. This requirement recognises the integral linkage between well integrity and the equipment used for containing pressure in a well. Therefore, in line with the object of the Wells Regulations, this item effectively expands the scope of the information required in the WOMP so that the Regulator’s capacity for oversight is optimised.

This item also inserts a new regulation 5.03A, to clarify the scope of the definition of “well activity”. To ensure all stages of the well life, including when a well is not operational, are included within the remit of the definition of a “well activity”, new regulation 5.03A provides that if there is a well in a title area that is not operational (but not yet permanently abandoned), the titleholder is taken for the purpose of the Wells Regulations, to be undertaking a well activity in relation to the well. The new regulation clarifies that the titleholder would be undertaking a “well activity” during periods when the well is not operational, such as when a well has been suspended. Accordingly the new regulation complements the requirement to have a WOMP in force for undertaking a well activity under regulation 5.04, and affirms that a WOMP in force is required for the entire life of a well up until, and including the activity of, permanent abandonment.

#### **Item [27] – Regulation 5.04 (heading)**

This item repeals the heading “Requirement to have *accepted* well operations management plan” and substitutes it with “Requirement to have well operations management plan *in force*” (emphasis added). This reflects the amendments made to refer consistently throughout the Wells Regulations to a WOMP that is “in force” – see discussion at item 20.

#### **Item [28] – Paragraph 5.04(1)(b)**

This item repeals paragraph 5.04(1)(b) and substitutes it with a new paragraph 5.04(1)(b) that removes the reference to an “accepted” WOMP, so that the paragraph only refers to a WOMP “in force”. This reflects the amendments made to refer consistently throughout the Wells Regulations to a WOMP that is “in force” – see discussion at item 20.

#### **Item [29] – Subregulation 5.04(2) (note)**

This item makes the existing Note to subregulation 5.04(2) “Note 1”. The previous Note to subregulation 5.04(3) (with some revisions) has become “Note 2” to subregulation 5.04(2), as subregulation 5.04(3) has been repealed – see items 30 and 31.

#### **Item [30] – At the end of subregulation 5.04(2)**

This item makes the previous Note to subregulation 5.04(3) (which has been repealed – see item 31) Note 2 to subregulation 5.04(2). It also amends the Note for clarity, and to include references to the general powers of NOPSEMA and the responsible Commonwealth Minister to give directions to titleholders and also their powers to give remedial directions under the OPGGS Act.

### **Item [31] – Subregulation 5.04(3)**

This item repeals subregulation 5.04(3), which provides that a titleholder does not commit an offence under subregulation 5.04(1) (requirement to have well operations management plan in force in order to undertake a well activity) if there is an emergency that could result in serious harm such as injury or damage, and undertaking the well activity is required to avoid that harm. This subregulation is no longer necessary given amendments made by the Regulation that require titleholders to have a WOMP in force for the full life of a well, and that also require the content of the WOMP to include arrangements for responding to a loss of well integrity – see item 42 (new paragraph 5.09(1)(k)).

### **Item [32] – Regulation 5.05 (heading)**

This item repeals the heading “Requirement to undertake activities in accordance with *accepted* well operations management plan” (emphasis added) and replaces it with the heading “Requirement to undertake activities in accordance with well operations management plan”. This reflects the amendments made to refer consistently throughout the Wells Regulations to a WOMP that is “in force”, and therefore remove references to an “accepted” WOMP – see discussion at item 20.

### **Item [33] – Paragraphs 5.05(1)(b) and (c) Item [34] – After subregulation 5.05(1)**

This item inserts a new subregulation 5.05(1A), which makes it an offence if the titleholder does not undertake a well activity that is required by a WOMP in force. As the remit of the Wells Regulations now includes the entire life of the well, this means that a WOMP is required to be in force for the life of a well and the titleholder is responsible for the maintenance of well integrity by ensuring risks are reduced to ALARP up to and including the act of permanent abandonment. Accordingly, the creation of a new offence at subregulation 5.05(1A) complements the new remit of the Wells Regulations by ensuring that if a WOMP is in force, and the WOMP requires that positive actions be taken in relation to the well, the titleholder is required to undertake the activities required by that WOMP, and any conditions attached to the WOMP – see discussion at item 33. The new offence at subregulation 5.05(1A) ensures that if a WOMP is in force, the titleholder has a positive obligation to undertake the activities required by the accepted WOMP to ensure that well integrity is maintained, including monitoring and maintenance of a suspended well. The reference in subregulation 5.05(1A) to the WOMP requiring the titleholder to undertake an activity is intended to include a reference to provisions of the WOMP that state that the titleholder will undertake an activity in circumstances specified in the WOMP. For example, when the titleholder is operating a well for the recovery of petroleum, the WOMP (which is prepared by the titleholder) may specify a program of monitoring and verification that the titleholder will undertake in relation to the well. New subregulation 5.05(1A) makes it mandatory for the titleholder to undertake the program of monitoring and verification.

As per subregulation 5.05(2), the amended subregulation 5.05(1) remains an offence of strict liability and new subregulation 5.05(1A) is also an offence of strict liability – see discussion at item 35. It is appropriate to extend the application of strict liability for this offence due to serious nature of a failure to comply with the condition attached to a WOMP, which may result in potentially serious safety and environmental consequences comparable to a failure to comply with requirements of a WOMP under the previous subregulation 5.05(1). Strict liability is appropriate as it is intended to improve compliance with the regulatory regime, particularly given the remote and complex nature of offshore operations and the prevalence

of multiple titleholder arrangements which makes proving intent extremely difficult. This is consistent with the principles outlined in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011, which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

Applying strict liability to the amended subregulation 5.05(1) and new subregulation 5.05(1A) is consistent with the penalty previously attached to the old subregulation 5.05(1), which carries comparable level of risk of failure to comply.

#### **Item [35]– Subregulation 5.05(2)**

This item makes subregulation 5.05(1A) an offence of strict liability. It is appropriate to apply strict liability for this offence due to serious nature of a failure to comply, which may include potentially serious safety and environmental consequences. Strict liability is appropriate as it is intended to improve compliance with the regulatory regime, particularly given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements which makes proving intent extremely difficult. This is consistent with the principles outlined in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011, which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

Applying strict liability to subregulation 5.05(1A) is consistent with the penalty currently attached to subregulation 5.05(1), which carries comparable level of risk of failure to comply.

#### **Item [36] – Subregulation 5.05(2) (note)**

This item makes the existing Note to subregulation 5.05(2) “Note 1”. The previous Note to subregulation 5.05(3) (with some revisions) has become “Note 2” to subregulation 5.05(2) – see item 37.

#### **Item [37] – At the end of subregulation 5.05(2)**

This item makes the previous Note to subregulation 5.05(3) Note 2 to subregulation 5.05(2). It also amends the Note for clarity, and to include references to the general powers of NOPSEMA and the responsible Commonwealth Minister to give directions, and their powers to also give remedial directions under the OPGGS Act.

#### **Item [38] – Subregulation 5.05(3)**

This item repeals subregulation 5.05(3), which provides that a titleholder does not commit an offence under subregulation 5.05(1) (requirement to undertake activities in accordance with well operations management plan) if there is an emergency that could result in serious harm such as injury or damage, and undertaking the well activity in a way other than in accordance with a requirement of the WOMP is required to avoid that harm. This subregulation is no longer necessary given amendments made by the Regulation that require the content of the WOMP to include arrangements for responding to a loss of well integrity – see item 42 (new paragraph 5.09(1)(k)). In the event of a loss of well integrity, the titleholder should comply with the measures and arrangements set out in its WOMP to regain control of the well.

It is intended that the WOMP will set out comprehensive measures and arrangements for responding to a loss of well integrity. However, to allow some flexibility for titleholders to respond to a situation in a way not covered by a WOMP if necessary (for example, if there is an emergency incident that was not foreseeable when the WOMP was developed), a new subregulation 5.05(3) is inserted to enable the titleholder to seek consent in writing from the Regulator if the titleholder intends to undertake an activity otherwise than in accordance with a WOMP. Under new subregulation 5.05(3) the titleholder needs to demonstrate how the well activity will not result in a significant new or increased risk to well integrity (which would be a trigger for a revision to the titleholder's WOMP). The ability to undertake a well activity otherwise than in accordance with a WOMP with the written consent of the Regulator is consistent with similar provisions in the Safety Regulations and Environment Regulations.

This process for obtaining the Regulator's consent to undertake an activity otherwise than in accordance with the WOMP is not intended to detract from the important principle that the WOMP is the sole permissioning document for well activities. NOPSEMA is not under any obligation to allow the titleholder to utilise this fast-track process, if NOPSEMA considers that a revision of the WOMP is appropriate. The process is intended to be available to deal with the immediate aftermath of an emergency or for other circumstances where it is not practicable to revise the WOMP. NOPSEMA retains the ability to refuse consent in any circumstances where it considers that a revision to the WOMP is more appropriate.

To ensure the Regulator is able to carry out a proper assessment of the proposal to undertake a well activity in a specified manner, the new subregulation 5.05(3) requires that the titleholder makes its request in writing and that the request contains sufficient information to enable the Regulator to assess whether the requirements in new subregulation 5.05(5) are met.

In accordance with subsection 13.3(3) of the *Criminal Code Act 1995*, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant will therefore bear an evidential burden in relation to the question whether the Regulator has consented in writing to the defendant undertaking the activity in a specified manner, and whether the titleholder has undertaken the activity in that manner. The burden of proof is reversed because the matter of whether the titleholder has undertaken the activity in the manner consented to by the Regulator is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote and highly technical nature of offshore petroleum and greenhouse gas operations.

#### **Item [39] – Subregulation 5.06(2)**

This item amends subregulation 5.06(2) so that a titleholder must submit a WOMP to the Regulator at least 30 days before the proposed start of the *first* well activity to which the WOMP would apply. This reflects that, as a result of the amendments made by the Regulation, the focus of the WOMP is on the full life of a well, rather than specific well activities.

The initial WOMP that is submitted at least 30 days before the first well activity is not required to include all well activities that are proposed to be undertaken during the well life. Paragraph 5.06(3)(c) (as amended by item 40) enables a titleholder to submit a WOMP in part, with the written approval of the Regulator. Under new subregulation 5.10(1) (see item 44), the titleholder is required to submit a proposed revision of the WOMP before the start of

any well activity that the WOMP as currently in force does not apply to. Since the concept of a well activity includes everything that a titleholder can do in relation to the well (including having a non-operational well in the title area), the titleholder will in practice be unable to avoid submitting a revision to the WOMP without committing an offence.

New paragraph 5.06(2)(b) maintains the ability for the Regulator to agree in writing for the WOMP to be submitted within another (i.e. shorter) period before the proposed start of the first well activity to which the WOMP would apply.

#### **Item [40] – Paragraphs 5.06(3)(b) and (c)**

This item amends paragraph 5.06(3)(b) so that a WOMP may apply to more than one well if the integrity of each well is subject to similar risks. For example, a group of wells may be subject to similar risks if they will encounter similar geological structures or pressures during well operations. This aligns with the object of the Wells Regulations to focus on maintenance of well integrity by ensuring risks to integrity are reduced to as low as reasonably practicable. The amendment also reduces regulatory burden for titleholders, because they will be able to adopt a consistent approach within one document to describe and evaluate the well integrity risks and risk mitigation strategies in relation to more than one well, if those risks are similar. This will create efficiencies for titleholders and the Regulator in preparing and assessing WOMPs respectively. Note that the WOMP acceptance criteria in regulation 5.08 include (paragraph (c) and subregulation 5.07(1)) that NOPSEMA is reasonably satisfied that the risks to the integrity of each well are in fact similar.

Further, this item amends paragraph 5.06(3)(c) to enable a titleholder to submit a WOMP *in part*, with the written approval of the Regulator. This is in comparison to previous paragraph 5.06(3)(c), which enabled a titleholder to submit a WOMP in parts *for particular stages of a well activity*. This amendment reflects the purpose of the WOMP to maintain well integrity across the entire life of the well, rather than to focus on risks associated with particular well activities. The ability to submit a WOMP in part also enables flexibility for titleholders to include information in the WOMP in relation to one or more activities or stages of the life of a well.

If an initial WOMP has been submitted in part, new subregulation 5.10(1) (see item 44) requires the titleholder to submit a proposed revision of the WOMP before the start of any well activity that the WOMP as currently in force does not apply to.

#### **Item [41] – Regulations 5.07 and 5.08**

This item repeals regulation 5.07, which sets out the previous decision-making process in relation to a submitted WOMP under the Wells Regulations. This item also inserts new regulations 5.07 and 5.07A, which replace the previous decision-making process with a process that substantially mirrors the process for making a decision in relation to a submitted environment plan and safety case in the Environment Regulations and Safety Regulations respectively.

##### *Regulation 5.07 – Decision on well operations management plan*

Under new regulation 5.07, the Regulator has 30 days after first receiving a WOMP to decide whether or not it is reasonably satisfied that the WOMP meets the acceptance criteria that are

set out in regulation 5.08. Alternatively, if the Regulator is unable to make a decision within 30 days, the Regulator is required to give the titleholder notice in writing to this effect, and set out a proposed timetable for consideration of the WOMP.

Subregulation 5.07(7) makes clear, however, that a decision by the Regulator in relation to the WOMP is not invalid only because the Regulator did not meet the 30 day period to make a decision. This will ensure that the validity of all decisions is maintained.

If the Regulator is reasonably satisfied that the WOMP meets the acceptance criteria in regulation 5.08, the Regulator *must* accept the WOMP. On the other hand, if the Regulator is not reasonably satisfied that the WOMP meets the criteria, it must give the titleholder a notice under subregulation 5.07(2).

Subregulation 5.07(2) sets out the requirements for a notice given to the titleholder. In particular, the notice must identify the criteria in regulation 5.08 about which the Regulator is not reasonably satisfied, and set a date by which the titleholder may resubmit the WOMP for further assessment. The date specified needs to give the titleholder a reasonable opportunity to modify and resubmit the WOMP (subregulation 5.07(3)).

Under the previous regulation 5.07, the Regulator had the ability to reject an initial WOMP submission without any obligation to provide the titleholder with a reasonable opportunity to modify and resubmit the WOMP. This is therefore changed by this item, to ensure that titleholders are given a fair opportunity to remedy the deficiency in the initial WOMP submission.

If the titleholder does not resubmit the WOMP by the date referred to in the notice, or a later date agreed with the Regulator, the Regulator is required to refuse to accept the WOMP, accept the WOMP in part, or accept the WOMP subject to conditions (subregulations 5.07(5) and (6)).

If the titleholder resubmits the WOMP by the date referred to in the notice, or a later date agreed with the Regulator, the Regulator has 30 days after receiving the WOMP to decide whether or not it is reasonably satisfied that the resubmitted WOMP meets the acceptance criteria that are set out in regulation 5.08. Alternatively, if the Regulator is unable to make a decision within 30 days, the Regulator is required to give the titleholder notice in writing to this effect, and set out a proposed timetable for consideration of the WOMP.

Again, subregulation 5.07(7) makes clear that a decision by the Regulator in relation to the WOMP is not invalid only because the Regulator did not meet the 30 day period to make a decision. This will ensure that the validity of all decisions is maintained.

If the Regulator is reasonably satisfied that the resubmitted WOMP meets the acceptance criteria in regulation 5.08, the Regulator must accept the WOMP. The Regulator is 'reasonably satisfied' if:

- (i) the Regulator is satisfied; and
- (ii) that satisfaction is reasonable.

On the other hand, if the Regulator is still not reasonably satisfied that the resubmitted WOMP meets the criteria, it must do one of the following:

- Give the titleholder a further notice under subregulation 5.07(2). Again, the notice must set out the criteria about which the Regulator is not reasonably satisfied, and set a date by which the titleholder may resubmit the WOMP. The Regulator may use this option to give a titleholder a reasonable number of opportunities to modify and resubmit the WOMP, as considered appropriate by the Regulator, rather than one of the options below.
- Refuse to accept the WOMP.
- Accept the WOMP in part, or accept the WOMP subject to conditions.

Similar to previous regulation 5.07, the Regulator is required to give the titleholder notice in writing of a decision by the Regulator to accept or refuse to accept the WOMP, or accept the WOMP in part or subject to conditions. If the decision is to refuse to accept the WOMP, the notice must set out the reasons for the decision. If the decision is to accept the WOMP in part, or subject to conditions, the notice must set out the terms of and reasons for the decision.

Under previous paragraph 5.07(7)(c) and subregulation 5.07(8), if a WOMP was accepted, the WOMP commenced on the day notified in the notice of decision. This is no longer required, as the new definition of “in force”, in relation to a WOMP, provides that a WOMP is in force if it has been accepted – see item 20. The WOMP will therefore commence once the Regulator has made a decision to accept the WOMP.

#### *Regulation 5.07A – Further information on submitted plan*

As discussed above, the Wells Regulations will now provide for modification and resubmission of a WOMP if the Regulator is not reasonably satisfied that the WOMP meets the acceptance criteria following its initial assessment of the WOMP. However, there was previously no specific provision that allowed flexibility for the Regulator to request additional information during its assessment of the WOMP. In comparison, regulation 2.25 of the Safety Regulations, which applies if a facility operator has submitted a safety case to NOPSEMA for assessment and acceptance, enables NOPSEMA to request further written information about any matter required by the Safety Regulations to be included in a safety case, before making a decision to accept or reject the safety case. If the facility operator provides the information as requested, the information becomes part of the safety case as if it had been included in the safety case as it was first submitted to NOPSEMA, and NOPSEMA must have regard to it. An equivalent provision is included in regulation 9A of the Environment Regulations, in relation to an environment plan submitted to the Regulator under those Regulations.

This item therefore also inserts a new regulation 5.07A into the Wells Regulations, which enables the Regulator to request further written information about any matter required by the Wells Regulations to be included in the WOMP during its assessment of the WOMP. This ensures that if a submitted WOMP does not include relevant information, rather than being required to give the titleholder a notice under subregulation 5.07(2), or refuse to accept the WOMP, the Regulator may request the information, and consider the information as if it had been included in the submitted WOMP.

The Regulator may request further written information more than once prior to making a decision about the WOMP. Each request must be in writing, set out each matter for which information is requested, and specify a reasonable period within which the information is to be provided.

If the titleholder provides the information as requested, within the timeframe specified, this information will then form part of the WOMP, and the Regulator must have regard to this information as if it had been included in the WOMP when it was submitted. If the titleholder provides only some of the information requested to be provided, the information that *was* provided will be given regard to as if it had been included in the submitted WOMP.

Under new subregulation 5.07(1) or 5.07(4), the Regulator has 30 days after receiving a WOMP to make a decision in relation to the WOMP. The ability for the Regulator to request further written information under regulation 5.07A does not change this 30 day timeframe. However, if the Regulator requests further information, and the time to receive and consider that information will be longer than 30 days after the Regulator receives the WOMP, the Regulator has the ability to make a decision under paragraph 5.07(1)(c) or 5.07(4)(c), as applicable, that it is unable to make a decision on the WOMP within the 30 day period and give the titleholder notice in writing to this effect, setting out a proposed timetable for consideration of the WOMP.

#### *Regulation 5.08 – Criteria for acceptance of well operations management plan*

This item also amends regulation 5.08 of the Wells Regulations, which sets out the criteria that must be considered by the Regulator when assessing a WOMP, to reflect:

- the key factors relevant to acceptance of a WOMP that were identified during the review of the Principal Regulations, and
- the new content requirements for a WOMP (see item 42).

A key part of the new acceptance criteria is that the Regulator must be reasonably satisfied that the WOMP demonstrates how the titleholder will reduce risks to well integrity to as low as reasonably practicable (new paragraph 5.08(d)). This reflects the object of the Wells Regulations in the maintenance of the integrity of wells by ensuring that risks to well integrity are reduced to as low as reasonably practicable – see item 15. It also replaces the current acceptance criteria that relates to ‘good oilfield practice’. The acceptance criteria no longer focus on ‘good oilfield practice’ because, as discussed in item 13, the concept of ‘good oilfield practice’ is not appropriate as an object of the Wells Regulations. The concept is largely directed towards the economic optimisation of recovery of resources, whereas the object of the Wells Regulations is the maintenance of well integrity by ensuring that risks to integrity are reduced to as low as reasonably practicable.

In accordance with the revised focus of the WOMP on the well itself, rather than simply focussing on well activities, new paragraph 5.08(1)(b) requires the Regulator to be reasonably satisfied that the WOMP is appropriate to the nature and scale of the well, and of the well activities relating to the well, in order to accept a WOMP. This differs from previous paragraph 5.08(1)(a), which required the Regulator to be satisfied only that the WOMP was appropriate to the nature and scale of the well activity.

The revised content requirements for a WOMP (see item 42) include a description of the performance outcomes against which the performance of the titleholder in maintaining well integrity is to be measured, performance standards for the control measures that will be used

to ensure risks to well integrity are reduced to as low as reasonably practicable, and measurement criteria to determine whether the performance outcomes and standards are being met. The revised acceptance criteria therefore also require the Regulator to be reasonably satisfied that the performance outcomes, performance standards and measurement criteria included in the WOMP are appropriate.

As discussed under item 40, new paragraph 5.06(3)(b) enables a titleholder to submit a WOMP that applies to more than one well, if the integrity of each well is subject to similar risks. The revised acceptance criteria therefore ensure that, in order to accept a WOMP that applies to more than one well, the Regulator must be reasonably satisfied that the risks to the integrity of each well are sufficiently similar (new paragraph 5.08(c)). Where there are multiple wells, the WOMP must provide sufficient detail in relation to each well so that the Regulator can be reasonably satisfied that the acceptance criteria and content requirements are met in relation to each well.

#### **Item [42] – Subregulation 5.09(1)**

This item revises subregulation 5.09(1) of the Wells Regulations, which sets out the content requirements for a WOMP. This item provides new content requirements for WOMPs that reflect the expanded scope and nature of the WOMP as the sole permissioning document for wells and well activities across the entire well life, from design to abandonment. These requirements therefore oblige titleholders to explicitly demonstrate both their ability to maintain well integrity and the specific measures they would take to reduce risks to well integrity to as low as reasonably practicable. In line with an objectives-based regime, the content requirements ensure that the onus remains on the titleholder to demonstrate how risks to well integrity will be controlled.

In line with the object and purpose of the Wells Regulations, the WOMP will consider and address risks to well integrity only. Any occupational health and safety risks arising in relation to a well will be addressed under the Safety Regulations in the facility safety case developed by the facility operator for the drilling platform/facility from which the well will be drilled. Similarly, environmental risks in relation to the well will be addressed in the titleholder's environment plan for the relevant activity under the Environment Regulations.

The new content requirements include a description of the risk management process used to identify and assess risks to the integrity of the well (new paragraph 5.09(1)(b)). This will enable the Regulator to consider the titleholder's risk identification and assessment process when assessing the WOMP, and also consider the measures proposed in the WOMP to reduce risks to well integrity to as low as reasonably practicable in the context of that process.

New paragraph 5.09(1)(d) requires the titleholder to set out in the WOMP a description of the performance outcomes against which the performance of the titleholder in maintaining well integrity is to be measured. This therefore focusses on measuring the performance of the titleholder in achieving the object of the Wells Regulations. This is in comparison to previous paragraph 5.09(1)(c) (which is repealed by this item), which required the WOMP to include performance objectives against which the performance of the well activity is to be measured. The amendment therefore also demonstrates the shift in focus for the WOMP from individual well activities to the full life of the well.

New paragraphs 5.09(1)(e) and (f) respectively require titleholders to describe the control measures in place to ensure that risks to well integrity will be reduced to as low as reasonably practicable throughout the life of the well, including periods when the well is not operational,

and to describe performance standards for those control measures. This will enable the Regulator to assess the manner in which the titleholder will ensure risks to well integrity will be reduced to as low as reasonably practicable, and also reflects the proposed scope of the WOMP to cover the full life of the well, including periods when a well is not operational. The content requirement specifically excludes the period after the well has been permanently abandoned, as an active WOMP would cease after that time – see item 44 (new Division 5). The content requirement in new paragraph 5.09(1)(i) (discussed below) ensures that a titleholder must set out how the well will be permanently abandoned in such a way that well integrity will be maintained once the well has been permanently abandoned.

New paragraph 5.09(1)(h) requires a description of the monitoring, audit and well integrity assurance processes that will be implemented to ensure the performance outcomes and standards identified under paragraphs 5.09(1)(d) and (f) are being met throughout the life of the well, including periods when the well is not operational but has not been permanently abandoned. This paragraph is purposefully expressed in a non-prescriptive manner, to enable the titleholder to determine appropriate and suitable processes relevant to the particular circumstances. This could, for example, include a process of verification, which titleholders may utilise to ensure well integrity has been maintained at the completion of each well activity. The purpose of well verification would be to assure the titleholder that arrangements are in place to ensure well activities throughout the entire life of the well have been designed and constructed properly. The titleholder would have the choice to use either an external organisation or internal resources to perform this function; however it would be anticipated that the assessor would be sufficiently independent. New paragraph 5.09(h) also makes it clear that a WOMP must describe the monitoring, audit and well integrity assurance processes that are to be implemented throughout the life of the well, including during periods when the well is not operational but has not been permanently abandoned. This emphasises the intent that an active WOMP is required to cover well activities carried out during the life of the well, including when the well is not operational. In line with the intent that the regulatory regime for wells encompasses the entire life of the well, and not just standalone well activities, new paragraph 5.09(1)(i) requires titleholders to describe their arrangements for suspension and abandonment of the well, to ensure that risks to well integrity will be reduced to as low as reasonably practicable during the act of suspending or abandoning the well, *and* that well integrity will be maintained once the well has been suspended or abandoned. Situations may arise where titleholders will be required to unexpectedly suspend or abandon a well earlier than within planned timeframes. If such a situation arises, then the requirement under paragraph 5.09(1)(i) for titleholders to describe their arrangements for suspension and abandonment upfront in a WOMP will ensure that titleholders demonstrate how they will manage these activities so as to ensure risks to well integrity will be reduced to as low as reasonably practicable, and the titleholder will not then be required to demonstrate this in a later submission if a WOMP has been submitted in part.

New paragraph 5.09(1)(j) requires a description of the measures that will be used by the titleholder to ensure that contractors and service providers undertaking well activities are aware of their responsibilities in relation to the maintenance of well integrity, and have appropriate competencies and training. This content requirement recognises that while the titleholder is responsible for submission of and compliance with a WOMP, the role of third parties is inherently linked with the conduct of well activities. It aims to demonstrate to the Regulator that the titleholder has adequate arrangements in place for managing risks to well integrity where contractors and service providers are undertaking the activities, including identifying critical roles, formal competency systems, and ensuring the titleholder can satisfy itself that equipment (including the rig), processes and organisational systems are likely to

ensure risks are reduced to as low as reasonably practicable for the well activity under consideration.

The new content requirements also requires the WOMP (as the sole permissioning document) to include a description of specific contingency measures and arrangements that will be used to regain control of a well in the event that there is a loss of well integrity (new paragraph 5.09(1)(k)). This new requirement brings the Wells Regulations into line with the Safety and Environment Regulations, which respectively require a facility operator to set out arrangements for responding to an emergency in its safety case, and titleholders to set out arrangements for responding to an oil pollution emergency in their environment plan. Importantly, it aligns the onus of responsibility on the titleholder to demonstrate to the Regulator upfront that it has planned contingencies in place for loss of well control scenarios.

During consultation in relation to the proposed amendments, concerns were expressed about potential overlap between the new content requirement in paragraph 5.09(1)(k) and the oil pollution emergency plan required under the Environment Regulations. However, it is intended that the WOMP should focus on arrangements to regain well integrity, while the environment plan should focus on response and monitoring arrangements with respect to oil pollution.

The amendment of subregulation 5.09(1) also repeals previous content requirements, such as the requirement in previous paragraph 5.09(1)(b) to include an explanation of certain matters in order to show that a well activity, and all associated operational work, will be carried out in accordance with good oilfield practice. As stated in item 13, the object of achieving 'good oilfield practice' has been disapplied in relation to the Wells Regulations, and instead a wells-specific object aimed solely at maintaining well integrity by reducing risks to as low as reasonably practicable has been applied. This is because the concept of 'good oilfield practice' is largely directed towards the optimisation of recovery of resources, while the object of the Wells Regulations is maintenance of integrity of wells and well operations. Therefore, the content requirements under the Wells Regulations are no longer directed at achieving 'good oilfield practice' but are instead directed at demonstrating how risks to well integrity will be reduced to as low as reasonably practicable.

Previously, paragraph 5.09(1)(f) required the WOMP to include details of when and how the titleholder would notify the Regulator of certain matters, as well as what reports and information about these matters were to be given. Previous paragraph 5.09(1)(g) required an explanation of the way titleholders would keep information required by the WOMP. As discussed under item 49 (new Divisions 7 and 8), the amendments made by the Regulation include the insertion of specific, stand-alone provisions in the Wells Regulations requiring notification of certain well activities, requirements for notifying and reporting well-related incidents, and requirements for recording information about well-related incidents. These stand-alone provisions remove the need for the content requirements previously set out in paragraphs 5.09 (1)(f) and 5.09 (1)(g) of the Wells Regulations. Furthermore, including these matters as a WOMP content requirement, where each titleholder determined their own reporting and recording requirements, rather than a stand-alone requirement, increased the likelihood of inconsistent notifications, reporting and recording between different titleholders. Previous paragraphs 5.09(1)(f) and (g) are therefore removed from subregulation 5.09(1) by this item.

### **Item [43] – Regulation 5.10**

This item repeals regulation 5.10 of the Wells Regulations, which was concerned with the status of a WOMP that had been submitted and/or accepted in parts. The regulation provided that a part of a WOMP that was submitted and accepted after acceptance of the first part of the WOMP was taken to be a variation of the WOMP. This provision is no longer relevant because, as explained in item 44, the ‘variation’ process has been replaced by a ‘revision’ process. New subregulation 5.10(1) requires the titleholder to submit to the Regulator a proposed revision of its WOMP before the start of any well activity that the WOMP in force does not apply to. Under the new definition of “in force”, the revised WOMP becomes the WOMP currently in force if it is accepted by the Regulator – see item 20.

### **Item [44] – Divisions 4 and 5 of Part 5**

#### *Division 4 – Revision of well operations management plan*

Under the Wells Regulations, Division 4 previously provided for the variation of a WOMP in specified circumstances. In practice, a variation was taken to mean one or more submissions that could be appended to an existing WOMP. The review of the Wells Regulations found that a *revision* process, which requires reconsideration and resubmission of the entire document, is a more appropriate mechanism to update a WOMP. Requiring a revision helps ensure that all impacts of any change to a WOMP are considered, reducing the possibility that a WOMP in force may contain contradictory information, and ensuring that information available to the Regulator is fully updated. It is also consistent with the Safety and Environment Regulations, which refer to a revision of a safety case or environment plan respectively. Accordingly, this item repeals the variation process under Division 4, and replaces it with a new Division 4 relating to revision of WOMPs.

As discussed under item 40, a titleholder has the ability, with the approval of the Regulator, to submit a WOMP in part. Furthermore, the Regulator has the ability, under new subregulation 5.07(6), to accept a WOMP in part. This could mean that, at any one time, a WOMP may cover only certain well activities that will be undertaken during the well life. A titleholder is therefore required to submit a proposed revision of a WOMP before the start of any well activity that the WOMP as currently in force does not apply to – new subregulation 5.10(1). Under regulation 5.04, it is an offence for a titleholder to undertake a well activity without a WOMP in force for the well that applies to the well activity.

New subregulation 5.10(2) requires the titleholder to submit a proposed revision of a WOMP before making a significant change to the manner in which risks to well integrity are reduced to ALARP. Where a significant change is proposed, it is highly desirable that the Regulator has the ability to assess the change, and whether the WOMP still demonstrates that risks to well integrity will be reduced to ALARP. A significant change to the manner in which risks are reduced to ALARP could occur, for example, in the event that there is a new titleholder that takes over responsibility for the well and well operations, and proposes to introduce new or revised measures to control risks to well integrity.

New paragraphs 5.10(3)(b) and (c) require the titleholder to submit a proposed revision of a WOMP if NOPSEMA or the responsible Commonwealth Minister gives the titleholder a direction under one of the listed provisions of the OPGGS Act, if the direction requires the titleholder to do something that is inconsistent with the WOMP. This is largely equivalent to the circumstances in previous regulations 5.30 and 5.30A, which required a variation to be submitted, but also includes new references to directions given by the Regulator under

sections 576B, 580 or 592 of the OPGGS Act. Regulations 5.30 and 5.30A are therefore repealed – see item 53.

If a proposed revision is required under new paragraphs 5.10(3)(b) or (c), the Regulator is required to consider whether the proposed revision is consistent with the direction when deciding whether to accept the WOMP – see new subregulation 5.15(2). If the Regulator is not reasonably satisfied that the revised WOMP is consistent with the direction, the Regulator is not able to accept the revised WOMP.

Directions given by NOPSEMA under section 574 or 576B or the responsible Commonwealth Minister under section 574A or 580 must be complied with despite anything in regulations under the OPGGS Act. Therefore, the titleholder is required to comply with the direction even before the WOMP has been revised, but could not then be penalised for failure to comply with the WOMP. In practice, it is perhaps unlikely that either NOPSEMA or the Commonwealth Minister would give a direction requiring the titleholder to undertake an activity otherwise than in accordance with the existing WOMP and without the titleholder having an opportunity either to revise the WOMP or to obtain the consent of the Regulator to the carrying out of the activity in a particular manner. This is because the giver of the direction is unlikely to intend that the activity is to be carried out without consideration of the well integrity risks that the directed activity might give rise to. Nevertheless, in an emergency, this could occur and the titleholder will not commit an offence under the Wells Regulations by complying with the direction.

Although the OPGGS Act does not specify that directions given by NOPSEMA under section 586 or the responsible Commonwealth Minister under section 586A or 592 must be complied with despite anything in the regulations, the titleholder has until the expiry date of the title to comply with such a direction. Unless the direction is given close to the expiry date of the title, therefore, there should be sufficient time to comply with the requirement to submit a revised WOMP before the titleholder takes action to comply with the direction. Being given a direction does not excuse the titleholder from complying with regulatory requirements under the Wells Regulations, unless the terms of the direction make it impossible to comply both with the direction and with the regulations.

New regulation 5.11 enables the Regulator to notify a titleholder that they are required to submit a proposed revision of a WOMP, in much the same way that the Regulator could previously require a variation under previous regulation 5.14 of the Wells Regulations. However, the written notice requesting the revision is now specifically required to set out the matters to be addressed by the revision. Further, the notice no longer identifies the proposed date of effect of the revision, unlike the requirement under previous paragraph 5.14(c). The revised WOMP automatically comes into force if it is accepted by the Regulator – see definition of “in force” (item 20).

A titleholder still has the ability to give an objection to the requirement to revise the WOMP, within 21 days after receiving the notice (or a longer period allowed by the Regulator). The Regulator is required to consider the objection, and make a decision to accept or reject the objection within 30 days (new regulation 5.12).

New regulation 5.13 requires a titleholder to revise its WOMP on a five-yearly basis. Previously, under paragraph 5.17(d) of the Wells Regulations, a WOMP terminated automatically after five years from the time when the WOMP was accepted. This item repeals previous regulation 5.17 so that the WOMP no longer automatically terminates five years after acceptance (see discussion below). Instead, under new regulation 5.13, the WOMP is

required to be revised every five years to ensure it remains up-to-date. This will reduce regulatory burden for titleholders compared to the previous arrangements, because they are not required to submit an entirely new WOMP after five years, but instead are only required to submit a revised WOMP. If there are only a few updates required, the titleholder therefore only needs to make minimal revisions to the WOMP. It is also consistent with the requirement to revise a safety case every five years under the Safety Regulations, and to revise an environment plan every five years under the Environment Regulations.

A titleholder is required to submit to the Regulator a proposed revision of the WOMP at least 14 days before the end of the five year period starting on the day that the WOMP is first accepted under new regulation 5.07, and subsequently at least 14 days before the end of each five year period starting on the day the Regulator accepts each five yearly revision. However, the Regulator also has the ability to restart the five year clock if a major revision of a WOMP has been undertaken by the titleholder within a five year period – see paragraph 5.13(1)(a) and subregulation 5.13(2). This will avoid the requirement for the titleholder to submit another revision within a potentially short period of time, and thereby reduces the regulatory burden for titleholders.

Furthermore, particular transitional arrangements apply in the case of a WOMP that was accepted under the Wells Regulations before commencement of the Regulation, and which has been kept in force by the transitional provisions in Division 10 on commencement of the Regulation – see item 54 (subregulation 5.31(1)). In this case, the first five year period will commence on the first day that the Regulator accepts a proposed revision of the WOMP after commencement of the Regulation.

New regulation 5.15 ensures that new regulations 5.07, 5.07A and 5.08, which deal with the process and requirements for consideration and acceptance of a WOMP, also apply to proposed revisions of WOMPs. This helps to streamline the Wells Regulations, which previously repeated the provisions for consideration and acceptance of a new WOMP in Division 4 with respect to variations. As discussed above, if the reason for a proposed revision of a WOMP is that NOPSEMA or the responsible Commonwealth Minister gave the titleholder a direction which is inconsistent with the WOMP, regulation 5.08 applies as though it is a criterion for acceptance of the proposed revision that it is consistent with the direction. The Regulator therefore needs to be reasonably satisfied that the proposed revision is consistent with the direction in order to accept the revised WOMP.

New regulation 5.16 clarifies that, if a proposed revision is not accepted, the provisions of the WOMP as in force before the proposed revision was submitted remain in force. The Wells Regulations did not previously specifically provide for the status of a WOMP in the event that a variation was not accepted. New regulation 5.16 therefore clarifies the effect of a refusal decision for titleholders, and brings the Wells Regulations into line with the Safety and Environment Regulations.

#### *Division 5 – End of well operations management plan*

This item also repeals Division 5 of the Wells Regulations, which set out when a WOMP ceased to be in force. This is replaced by a new definition of “in force”, which provides that a WOMP is in force if acceptance of the WOMP has not been withdrawn by the Regulator under Division 6 of the Wells Regulations, and the operation of the WOMP has not ended – see item 20.

This is supplemented by the insertion of a new Division 5, which sets out when the operation of a WOMP ends. Under the new Division (regulation 5.17), the operation of a WOMP ends when the titleholder has permanently abandoned the well or wells to which the WOMP applies, the titleholder has provided a written report to the Regulator of the process by which the permanent abandonment has been carried out, and the outcomes of that process, and the Regulator has notified the titleholder that it is reasonably satisfied that the process of abandoning the well or wells has been undertaken in accordance with the WOMP. Given that the WOMP will have been accepted by the Regulator only if the Regulator was reasonably satisfied that the WOMP demonstrated that the abandonment would be carried out in a manner that reduces risks to well integrity to ALARP, abandoning the well in accordance with the WOMP should, as far as is practicable, ensure the ongoing maintenance of well integrity and reduction of risks to ALARP after the well has been permanently abandoned. The direct relationship between the end of the WOMP and the process of abandoning the well gives the Regulator greater regulatory oversight of this well activity, specifically in recognition of it being the final stage of the life of the well and also in recognition of potential legacy issues that may result post-abandonment. Abandonment is the last well activity for which the titleholder has responsibility under the Wells Regulations. The titleholder does not have any ongoing obligation under the Wells Regulations to monitor whether the well is leaking after the WOMP ceases to be in force. It is therefore appropriate that NOPSEMA exercise an increased level of regulatory oversight at the point immediately before the titleholder's responsibility ceases under the Regulations.

NOPSEMA's function under regulation 5.17 involves a comparison between the WOMP, which has been prepared by the titleholder and accepted by NOPSEMA, and the report prepared by the titleholder of the plugging and abandonment activity as it has been carried out. The requirement to prepare the report can be expected to have compliance benefits in relation to the titleholder's performance in undertaking the plugging and abandonment.

The requirement that the titleholder report on the outcome of the permanent abandonment process will ensure that NOPSEMA is aware of cases where the abandonment process did not go to plan and, for example, the outcome of the process is a well that is plugged unsatisfactorily, from a long-term integrity perspective. If this were to occur, NOPSEMA could refuse to give a notice under paragraph 5.17(c). The WOMP would then remain in force and it would need to be revised to provide for remedial work on the well.

The notification provided by the Regulator to the titleholder under paragraph 5.17(c) will be available for use by NOPSEMA to inform the response that NOPSEMA is required to give to the Titles Administrator under provisions such as paragraph 125(2)(c) and subparagraph 154(2)(a)(iii) of the OPGGS Act about the titleholder's compliance with regulations administered by NOPSEMA. Also, importantly, in relation to the plugging and abandoning of wells, this is especially relevant to the surrender of titles and NOPSEMA's role in providing information to the Titles Administrator on the titleholder's compliance with the regulations under subparagraph 270(3)(b)(v) and NOPSEMA has an obligation under paragraph 270(3)(d) of the OPGGS Act to inform the Titles Administrator whether the titleholder has plugged and abandoned all wells in the title area 'to the satisfaction of NOPSEMA' under paragraph 270(3)(d) of the OPGGS Act. Current transitional arrangements under which NOPSEMA relies on a statement by the titleholder that it has done so are clearly not appropriate in relation to the plugging and abandonment of wells in respect of which NOPSEMA has full regulatory oversight. (The interim arrangement was necessary because NOPSEMA will have had no knowledge of titleholder compliance at a time before NOPSEMA became the petroleum well integrity regulator in Commonwealth waters.) The

provision expressly refers to plugging of wells ‘to the satisfaction of NOPSEMA’. Now that NOPSEMA will have in its possession records of notices it has given under paragraph 5.17(c), or of decisions to refuse to give the notice, NOPSEMA will be able to perform its function under paragraph 270(3)(d) of the Act in the manner clearly envisaged by the provision.

New paragraph 5.17(a) specifies that the operation of a WOMP ends when the titleholder has permanently abandoned the well *or wells* to which the WOMP applies. The WOMP therefore continues to operate until all wells to which the WOMP applies have been permanently abandoned, and the titleholder has been notified by the Regulator that *each well* has been permanently abandoned in accordance with the WOMP. New paragraph 5.17(b) aligns and is consistent with NOPSEMA’s existing obligation in the OPGGS Act in relation to the surrender of titles (paragraph 270(3)(d)), where the Regulator’s satisfaction regarding the process of plugging and abandoning a well is demonstrated.

If the WOMP applies to more than one well, and one of those wells has been permanently abandoned, no further positive obligations apply under the WOMP in relation to that well (if it has been permanently abandoned in accordance with the WOMP). The new content requirements for a WOMP (discussed under item 42) also reflect this. For example, new paragraph 5.09(1)(e) requires a description of control measures that will be in place to ensure risks to well integrity are reduced to as low as reasonably practicable throughout the life of the well, but not including the period after the well has been permanently abandoned. New paragraph 5.09(1)(i) requires a description of arrangements that will be in place for abandoning a well, showing how risks to well integrity will be reduced to as low as reasonably practicable during the process of abandoning the well, and how the actions taken *during the process of abandonment* will ensure the integrity of the well is maintained while the well is abandoned. There is no requirement to revise the WOMP to remove references to a well that has been permanently abandoned. A titleholder may elect to do so, however, when the WOMP is revised after five years (see new regulation 5.13), to ensure that the WOMP is current. Previously under paragraph 5.17(a) of the Wells Regulations, a WOMP could be terminated when the titleholder withdrew the WOMP. However, a key objective of the amendments made by the Regulation is that the WOMP remains in force for the entire life of the well, even when the well is not operational, such as when the well is suspended or inactive. Therefore, this item removes the ability of the titleholder to withdraw the WOMP at their discretion. Under previous paragraph 5.17(d), a WOMP automatically terminated after the period of five years starting when the WOMP was accepted. This is replaced by a requirement to revise the WOMP on a five-yearly basis – see discussion above in relation to new regulation 5.13.

#### **Item [45] – Paragraph 5.18(a)**

Paragraph 5.18(a) of the Wells Regulations empowers the Regulator to withdraw its acceptance of a WOMP if a titleholder does not comply with the OPGGS Act, Part 5 of the Principal Regulations or a direction given under sections 574, 574A, 576B, 576C, 586, 586A and 592 of the OPGGS Act. This item adds to the list of directions referenced in paragraph 5.18(a), so that if a titleholder fails to comply with a direction given by NOPSEMA or the responsible Commonwealth Minister under those sections then the Regulator can withdraw its acceptance of the titleholder’s WOMP (subject to the notice and consultation provisions set out in regulations 5.19 and 5.20). This item also ensures consistency with the amended notes in subregulations 5.04(2) and 5.05(2).

### **Item [46] – Paragraph 5.18(b)**

Paragraph 5.18(b) of the Wells Regulations empowers the Regulator to withdraw its acceptance of a WOMP if the titleholder has not complied with the “accepted” WOMP. This item omits the word ‘accepted’ from paragraph 5.18(b). As discussed in item 20, this reflects the amendments made to refer consistently throughout the Wells Regulations to a WOMP that is “in force”, rather than an “accepted” WOMP.

### **Item [47] – Subregulation 5.19(2)**

Subregulation 5.19(2) of the Wells Regulations previously enabled the Regulator to give a copy of a notice of intention to withdraw its acceptance of a titleholder’s WOMP to a person other than the titleholder only if the titleholder agreed in writing. This item repeals that subregulation, and substitutes a new subregulation 5.19(2), so that the Regulator is able to give a copy of a notice of intention to withdraw acceptance of a titleholder’s WOMP to a person other than the titleholder if the Regulator considers it appropriate, without the requirement to obtain the agreement of the titleholder. This requirement is removed because third parties involved in well operations, such as drilling contractors and facility operators, may be affected by the Regulator’s decision to withdraw its acceptance of a titleholder’s WOMP, and accordingly they should be able to be notified where the Regulator considers it appropriate. This amendment is also consistent with equivalent provisions in the Safety Regulations and Environment Regulations.

### **Item [48] –After regulation 5.20**

This item inserts a new regulation 5.20A, which provides that withdrawal of a WOMP by the Regulator has no effect in relation to a well that is not operational at the time of the decision to withdraw the WOMP, to the extent that the WOMP deals with the period that the well is not operational.

Division 6 allows the Regulator to withdraw its acceptance of a titleholder’s WOMP if the titleholder has not complied with the Act, Part 5 of the Principal Regulations or a direction given under sections 574, 574A, 576B, 576C, 580, 586, 586A and 592 of the Act, or the titleholder has not complied with the WOMP in force, or the Regulator is satisfied for any other reason that its acceptance of the WOMP should be withdrawn.

Under the previous Wells Regulations, if acceptance of a WOMP had been withdrawn when the well, to which the withdrawal applies, is not operational, such as when it has been suspended, the titleholder would no longer be responsible for maintaining well integrity while the well is not operational, as there would not be a WOMP in force. Furthermore, if the titleholder did undertake ongoing activities following withdrawal of the WOMP, such as permanent abandonment or monitoring or maintenance, this would constitute an offence under regulation 5.04, as the titleholder would be undertaking well activities without an accepted WOMP in force.

New regulation 5.20A therefore provides that a decision by the Regulator to withdraw its acceptance of a WOMP has no effect in relation to a well that is not operational at the time of the decision, to the extent that the plan deals with the period that the well is not operational. The exception only applies to the part of the WOMP that relates to the non-operational well. If the WOMP includes other activities that are necessary in order for the well to become operational, such as re-entering the suspended well, a revised WOMP accepted by the

Regulator would be required to undertake such activities. This ensures that, in the case of non-operational wells, in particular suspended wells, titleholders will have a continuing obligation to undertake well activities in relation to the well, and ensure relevant non-compliance is remedied and revision of the WOMP is sought in order to perform other well activities.

#### **Item [49] – Divisions 7 and 8 of Part 5**

##### *Division 7 – Information about specific well activities*

This item repeals Division 7 of the Principal Regulations. Division 7 required titleholders to seek approval from the Regulator before undertaking certain well activities. A titleholder would commit an offence if it undertook the activity without the approval of the Regulator.

One of the key objectives of the amendments made by the Regulation is for the WOMP to function as the sole permissioning document for the life of a well. Acceptance of the WOMP gives permission for the titleholder to undertake any activities that the WOMP applies to. If the titleholder proposes to undertake an activity to which the WOMP in force does not apply, the titleholder needs to submit a revised WOMP. To ensure that the WOMP can effectively function as the sole permissioning document, amendments have been made to strengthen the content requirements for a WOMP – see discussion at item 42.

Given that acceptance of the WOMP demonstrates the Regulator’s reasonable satisfaction that the titleholder has appropriate mechanisms, systems and procedures in place for the activities covered by the WOMP, there is no longer any additional purpose served by requiring titleholders to obtain further approvals to undertake individual well activities. Division 7 is therefore repealed.

This item also inserts a new Division 7, which requires titleholders to notify the Regulator before the commencement of specified well activities. Removing specific activity approvals and moving to a notification approach removes a level of burden on industry, while still ensuring sufficient information in relation to the status of the well is received by the Regulator. This enables the Regulator, for example, to plan appropriate inspection timeframes for well activities.

The new Division 7 requires notification only; no further consent is required in order for the titleholder to commence the well activity. Importantly, the onus remains on the titleholder to ensure, in accordance with the WOMP, that risks to well integrity are reduced to ALARP and the activity should commence only if it is safe to do so.

New regulation 5.22 sets out the specific well activities for which notification is required, and the timeframe for notification. The relatively higher risk well activities require notification at least 21 days before the start of the activity; however, the Regulator may agree to a shorter period for notification. The relatively lower risk well activities require notification at any time before the commencement of the activity. This means, for example, that the titleholder could notify the Regulator of commencement *and* commence the activity on the same day.

New regulation 5.22 also sets out the information that is required to be included in a notice, and specifies that the notice must be in writing.

Where it is convenient to do so, a titleholder will be able to include a notification relating to more than one well activity in the same notice under new regulation 5.22. This may be the case, for example, for batch drilling operations on multiple well field developments.

However, the notice must comply with the content and timing requirements under regulation 5.22 with respect to *each* well activity.

New regulation 5.23 enables the Regulator to request further written information about the proposed well activity. It is intended that the Regulator should have access to up-to-date and complete information about the conduct of well activities. The Regulator may therefore use the proposed provision where, for example, the titleholder has not provided all of the required information, or has not provided sufficient detail in relation to some aspects of the required information. A request by the Regulator for further information must be in writing, and describe the information that is requested.

New regulation 5.24 requires the titleholder to provide the Regulator with updated information as soon as practicable, if the information in a notice about a well activity previously given to the Regulator under new regulation 5.22 is no longer accurate. This ensures that the Regulator will have access to accurate and up-to-date information about the well activity. The titleholder is *not* required to cease operations until the Regulator has been given the updated information.

If the reason that the information provided in the original notification to the Regulator is no longer accurate is because the integrity of the well is subject to a significant new risk or a significantly increased risk, however, it is not sufficient for the titleholder to provide updated information. The titleholder is instead required to submit a proposed revision of its WOMP, taking into account the new or increased risk – see item 44 (new paragraph 5.10(3)(a)).

New regulation 5.25 requires the titleholder to notify the Regulator in writing if an activity for which notice was required under regulation 5.22 has been completed, no later than 10 days after completion of the activity. This ensures that the Regulator will be fully informed about, and can provide effective oversight for, well activities. New regulation 5.25 only applies if an activity is completed; it does not imply that an activity *must* be completed, if there are operational reasons to not complete the activity.

Paragraph 5.18(a) of the Wells Regulations makes it a ground for the Regulator to withdraw its acceptance of a titleholder's WOMP if the titleholder has not complied with the Wells Regulations. A failure to comply with the new notification requirements in Division 7 is therefore a ground for withdrawal of acceptance of the titleholder's WOMP.

Subregulation 5.28(1) of the Wells Regulations requires a petroleum titleholder to give a copy to the National Offshore Petroleum Titles Administrator (Titles Administrator) of any notice given to NOPSEMA in compliance with the Wells Regulations. A petroleum titleholder is therefore required to give to the Titles Administrator a copy of a notice given to NOPSEMA under new regulation 5.22. This enables the Titles Administrator to be aware of well activities that are taking place, and consider whether there may be any resource management implications.

#### *Division 8 – Incidents, reports and records*

This item repeals Division 8 of the Principal Regulations (regulation 5.26), which made it an offence if, while a titleholder was operating a well in a title area, a new well integrity hazard was identified or there was a significant increase in an existing risk, and the titleholder did not control the hazard or risk. If a well becomes subject to a significant new or significantly increased risk to well integrity, the titleholder is required to submit a revision of the WOMP in force in relation to the well – see item 44 (new paragraph 5.10(3)(a)). In the event of a loss

of well integrity, the titleholder is required to put in place the arrangement set out in its WOMP to regain control of the well. Failure to comply with the WOMP is an offence under regulation 5.05 of the Principal Regulations. Previous regulation 5.26 is therefore no longer required.

This item also inserts a new Division 8, which provides for notification, reporting and recording of reportable incidents. (Reportable incidents are defined in regulation 5.02 – see item 22.)

Under the OPGGS Act and Safety Regulations, facility operators have a duty to notify and report to the Regulator accidents that result in death or serious injury, or cause a member of the workforce to be incapacitated for a period of at least three days, and dangerous occurrences (as defined in the Safety Regulations). Under the Environment Regulations, titleholders have a duty to notify and report reportable incidents, defined as those events that caused or had the potential to cause moderate to significant environmental damage.

While titleholders have an overarching duty of care in Schedule 3 to the OPGGS Act in relation to wells, there is no specific provision in the OPGGS Act or the Wells Regulations for titleholders to notify and report well-related incidents. As it is the titleholder that is the primary duty holder with respect to well integrity, the titleholder should have a duty to report well-related incidents to the Regulator. Previous WOMP content requirements, whereby titleholders were allowed to determine their own arrangements for reporting well-related incidents, did not provide a consistent approach to incident notification and reporting.

New Division 8 therefore provides specific, stand-alone notification, reporting and recording requirements in relation to well-related incidents (reportable incidents). The previous WOMP content requirements which enabled titleholders to determine their own arrangements for reporting are repealed – see discussion at item 42.

New regulation 5.26 provides for notification of reportable incidents to the Regulator. It makes it an offence of strict liability if there is a reportable incident in relation to a well in a title area, and the titleholder does not give notice of the incident to the Regulator in accordance with new subregulation 5.26(3). New subregulation 5.26(3) sets out when a notice is required to be given to the Regulator, and the information that the notice must contain. It also requires the notice to be given orally. In the case of a written notification, there is a risk that the notification may not be received when or soon after it is sent, and therefore the notification may not be actioned promptly or appropriately. Requiring the notice to be given orally helps ensure that all reportable incidents can be addressed in a timely manner.

New regulation 5.26A provides for written reporting of reportable incidents to the Regulator. It makes it an offence of strict liability if there is a reportable incident in relation to a well in a title area, and the titleholder does not give a written report of the incident to the Regulator in accordance with new subregulation 5.26A(3). New subregulation 5.26A(3) sets out when a written report is required to be given to the Regulator, and the information that the report must contain.

New regulation 5.26B makes it an offence of strict liability if a titleholder does not store a copy of a written report given to the Regulator under regulation 5.26A in a way that makes retrieval of the report reasonably practicable. The copy of the report must be kept for at least five years. Recording well-related incidents is necessary to determine potential precursors to major accidents, and may be a key indicator of asset integrity management.

As noted above, failure to comply with incident notification, reporting or recording requirements is an offence of strict liability. It is appropriate to apply strict liability to these offences to ensure that the regulations can be enforced more effectively as, given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011, which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

Paragraph 5.18(a) of the Wells Regulations makes it a ground for the Regulator to withdraw its acceptance of a titleholder's WOMP if the titleholder has not complied with the Wells Regulations. A failure to comply with the new incident notification, reporting and recording requirements in Division 8 is therefore also a ground for withdrawal of acceptance of the titleholder's WOMP.

**Item [50] – Subregulation 5.28(1)**

This item omits the reference to an “accepted” WOMP, to reflect the proposal to refer consistently throughout the Wells Regulations to a WOMP that is “in force”, rather than an “accepted” WOMP – see discussion at item 20.

**Item [51] – Regulation 5.29 (heading)**

This item amends the heading for regulation 5.29 as a consequence of the amendment made by item 52 – see discussion below.

**Item [52] – Regulation 5.29**

Regulation 5.29 of the Wells Regulations previously provided that, if the responsible Commonwealth Minister gave a direction to a petroleum titleholder under section 574A or 586A of the OPGGS Act, the *titleholder* was required to give a copy of the direction to NOPSEMA as soon as practicable. Giving a copy of directions to NOPSEMA is intended to ensure that NOPSEMA, as the Regulator in relation to petroleum wells, is made aware of any directions that are given by the responsible Commonwealth Minister to a petroleum titleholder that may have an impact on well operations, and/or that may be inconsistent with a requirement in the titleholder's WOMP (noting that new paragraph 5.10(3)(c) requires the titleholder to submit a proposed revision of its WOMP if the responsible Commonwealth Minister has given the titleholder a direction under section 574A, 580, 586A or 592 that is inconsistent with the WOMP – see item 44).

This item amends regulation 5.29 so that if the responsible Commonwealth Minister gives a direction to a titleholder under section 574A or 586A of the OPGGS Act it is the *Minister*, rather than the titleholder, who must then give a copy of the direction to NOPSEMA. This therefore removes an unnecessary regulatory burden on titleholders.

**Item [53] – Regulations 5.30 to 5.31A**

Regulation 5.30 of the Wells Regulations required a titleholder to vary its WOMP if it was inconsistent with a direction given by NOPSEMA under section 574 or 586 of the OPGGS Act, and regulation 5.30A required a titleholder to vary its WOMP if it was inconsistent with

a direction given by the responsible Commonwealth Minister under section 574A or 586A of the OPGGS Act. This item repeals these regulations.

As discussed under item 44, amendments made by the Regulation provide for WOMPs to be “revised” rather than “varied”. Under new paragraphs 5.10(3)(b) and (c), a titleholder is required to submit a revised WOMP to the Regulator if NOPSEMA gives a direction to the titleholder under section 574, 576B or 586 of the OPGGS Act, or the responsible Commonwealth Minister gives a direction to the titleholder under section 574A, 580, 586A or 592 of the OPGGS Act, that is inconsistent with the WOMP. Regulations 5.30 and 5.30A are therefore redundant.

This item also repeals regulations 5.31 and 5.31A of the Wells Regulations. Regulations 5.31 and 5.31A provided that an approval to undertake a well activity given under regulation 5.25 ceased to be in force if the approval was inconsistent with a direction from NOPSEMA under section 574 or 586 of the OPGGS Act, or a direction from the responsible Commonwealth Minister under section 574A or 586A of the OPGGS Act. Item 49 removes the requirement for titleholders to obtain approval to undertake well activities; regulations 5.31 and 5.31A are therefore redundant.

#### **Item [54] – Division 10 of Part 5**

This item repeals Division 10 of the Wells Regulations. Division 10 provided transitional provisions that applied following the repeal of the previous *Offshore Petroleum and Greenhouse Gas Storage (Management of Greenhouse Gas Well Operations) Regulations 2010* and the previous *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*, and commencement of the Principal Regulations on 29 April 2011. These provisions can now be removed as they have operated as required, and repeal of the provisions does not affect the previous operation of the provisions as a result of section 7 of the *Acts Interpretation Act 1901*.

This item also inserts a new Division 10, which sets out transitional provisions that apply when the Regulation commences.

#### *Regulation 5.30*

New regulation 5.30 provides definitions that apply to terms used in new Division 10.

#### *Regulation 5.31*

New subregulation 5.31(1) ensures that if there was an accepted WOMP in force for undertaking a well activity in relation to a well in a title area (regardless of whether or not the activity was being undertaken at that time), it is taken to be the WOMP in force for that well under the Wells Regulations as amended. Titleholders are therefore able to continue to undertake well activities after commencement of the Regulation in accordance with the previously accepted WOMP.

Under the previous Wells Regulations, a WOMP was submitted in relation to a well activity. There may therefore be more than one WOMP that applies to a well, in relation to different well activities. Under the amended Wells Regulations, however, there will only be one WOMP that applies to each well, for the entire life of that well. Therefore, if there is more than one WOMP that applies to a well, after commencement of the Regulation those WOMPs will be combined by operation of the subregulation, and the combined WOMP is taken to be the WOMP in force for the well under the amended Wells Regulations.

New subregulation 5.31(2) provides for the day on which a WOMP that is continued in force for a well after commencement of the Regulation is taken to have been first accepted. This is important because, from commencement of the Regulation, the WOMP revision provisions in new Division 4 apply (see item 44), including the requirement to submit a five year revision of the WOMP (new regulation 5.13). Therefore if, at a time after commencement of the Regulation, it will be five years after a titleholder's WOMP was first accepted, the titleholder will be required to submit a proposed revision of the WOMP in accordance with the amended Wells Regulations, unless the titleholder has already submitted a proposed revision under new subregulation 5.31(5) (see discussion below).

For example, assume a titleholder's WOMP was accepted under the previous Wells Regulations on 31 August 2011. This date is also taken to be the date that the WOMP was first accepted in accordance with new subregulation 5.31(2). On commencement of the Regulation on 1 January 2016, the new Division 4 applies, including new regulation 5.13. Therefore, at least 14 days before the end of the period of five years beginning on the day the WOMP was first accepted (i.e. 31 August 2011), the titleholder is required to submit a proposed revision of the WOMP. That is, the titleholder is required to submit a proposed revision of the WOMP by 17 August 2016 (unless the titleholder had already submitted a proposed revision under new subregulation 5.31(5)).

New subregulation 5.31(3) sets out provisions of the amended Wells Regulations that do not apply in relation to a well after commencement of the Regulation, until a titleholder has had a revised WOMP accepted under the amended Wells Regulations. It also sets out provisions of the previous Wells Regulations that continue to apply in relation to a well, despite the commencement of the Regulation, until a titleholder has had a revised WOMP accepted under the amended Wells Regulations.

Regulation 5.03A (which deems a well that is not operational to be a well activity) of the proposed Regulation does not apply to the well until a revision of the WOMP has been accepted. This is to ensure that having a non-operational well does not immediately cause the titleholder to be committing an offence as soon as the amendments commence. This also applies to regulation 5.34 on existing wells without a WOMP (see below).

Division 2 of the previous Wells Regulations (which required a titleholder to have an accepted WOMP in order to undertake a well activity, and to comply with the accepted WOMP) continues to apply in relation to a well, and does not apply as it is amended by the Regulation, until a titleholder has had a revised WOMP accepted under the amended Wells Regulations. This is because a WOMP that was accepted under the previous Wells Regulations would not include the measures and arrangements that will be used to regain control of a well if there is a loss of well integrity that are required to be included in a WOMP under the amended Wells Regulations – see item 42 (new paragraph 5.09(1)(k)). The emergency exception to the offence provisions in regulations 5.04 and 5.05 under the previous Wells Regulations therefore continues to apply until the titleholder has revised its WOMP.

Division 7 of the previous Wells Regulations continues to apply in relation to a well, and the new Division 7 inserted by the Regulation does not apply, until a titleholder has had a revised WOMP accepted under the amended Wells Regulations. Previous Division 7 required titleholders to obtain approval from the Regulator in order to undertake certain well activities. The new content requirements for a WOMP (see item 42) ensure that a WOMP must include sufficient information so that it can function as the sole permissioning document for the entire

life of the well, without the need to obtain further approvals – see discussion at item 49. However, a WOMP that was accepted under the previous Wells Regulations would be unlikely to meet this threshold. Therefore, a titleholder is required to continue to obtain well activity approvals until the titleholder has revised its WOMP in accordance with the amended Wells Regulations. As the titleholder continues to be required to obtain well activity approvals, the new Division 7 (which requires notification of commencement of certain well activities) does not apply until the titleholder has revised its WOMP.

Regulations 5.31 and 5.31A of the previous Wells Regulations (which provide that a well activity approval ceases to be in force if a direction is given by NOPSEMA under section 574 or 586 of the OPGGS Act, or by the responsible Commonwealth Minister under section 574A or 586A of the OPGGS Act, that is inconsistent with the approval), are also kept in force until the titleholder has revised its WOMP, and is no longer required to obtain well activity approvals.

Division 8 of the previous Wells Regulations (which made it an offence if a titleholder failed to control a well integrity hazard or significant increase in an existing risk for a well) continues to apply in relation to a well, until a titleholder has had a revised WOMP accepted under the amended Wells Regulations. As discussed under item 49, under the amended Wells Regulations, in the event of a loss of well integrity, the titleholder is required to put in place the measures and arrangements set out in its WOMP to regain control of the well – see item 42 (new paragraph 5.09(1)(k)). However, a WOMP that was accepted under the previous Wells Regulations would not include the required measures and arrangements. Therefore, Division 8 of the previous Wells Regulations continues to apply until the titleholder has revised its WOMP in accordance with the amended Wells Regulations.

However, as made clear in new subregulation 5.31(4), the temporary continuation in force of Division 8 of the previous Wells Regulations does not mean that the new Division 8 which is inserted by the Regulation does not also apply. New Division 8 (which relates to notification, reporting and recording of reportable incidents – see item 49) applies in relation to *all* wells from commencement of the Regulation.

New subregulation 5.31(5) provides for a titleholder to submit a proposed revision of a WOMP that is kept in force under new subregulation 5.31(1), in accordance with the requirements of the amended Wells Regulations, within two years from the day of commencement of the Regulation (i.e. before 1 January 2018). Although the provision states that a titleholder *may* submit a proposed revision of the WOMP, the effect of new subregulation 5.31(6) should be noted; i.e. that a WOMP that is continued in force under new subregulation 5.31(1) ceases to be in force two years after the commencement of the Regulation (i.e. on 1 January 2018) if a proposed revision of the WOMP has not been accepted under the amended Wells Regulations. If a titleholder wishes to have a WOMP in force for the well at the end of the two year period, the titleholder must therefore submit a proposed revision within the two year period.

It is noted that, from commencement of the Regulation, the new Division 4 (which provides for revisions of WOMPs) immediately applies in relation to all WOMPs, including WOMPs that have been kept in force. Therefore, a titleholder must submit a proposed revision of its WOMP if it is required to do so under new regulation 5.10 (revision based on circumstances), 5.11 (revision required by Regulator), or 5.13 (revision at end of each five year period – see discussion above). The titleholder therefore does not need to submit a proposed revision

under new subregulation 5.31(5) if the titleholder has already been required to submit a revision under new Division 4.

As discussed above, new subregulation 5.31(6) provides that a WOMP ceases to be in force two years after the commencement of the Regulation, if no proposed revision of the WOMP (whether under new subregulation 5.31(5) or new Division 4) has been accepted within that time. However, new subregulation 5.31(7) ensures that if the titleholder has submitted a proposed revision before the end of the two year period, and the Regulator has not yet made a decision on the proposed revision by the end of the two year period, the WOMP continues in force (as revised) if the Regulator subsequently accepts the proposed revision. If, on the other hand, the Regulator decides to refuse to accept the proposed revision, the WOMP will cease to be in force on the day the Regulator gives the titleholder notice of the decision.

It is important to note that, given that new Division 4 applies from commencement of the Regulation, new regulation 5.16 also applies from commencement. New regulation 5.16 provides that if a proposed revision of a WOMP is not accepted, the provisions of the WOMP in force before the proposed revision was submitted remain in force – see item 44. Therefore, if a proposed revision submitted under new Division 4 or new subregulation 5.31(5) is not accepted by the Regulator, the previous WOMP will continue in force. Regulation 5.16 specifies, however, that this is subject to the OPGGS Act and the Wells Regulations. Therefore, new subregulation 5.31(6) and paragraph 5.31(7)(b) will apply so that the WOMP ceases to be in force, despite new regulation 5.16.

#### *Regulation 5.32*

Regulation 5.32 makes provision for situations in which a titleholder has applied for acceptance of a WOMP before commencement of the Regulation, but the Regulator had not yet decided whether to accept or refuse to accept the WOMP when the Regulation commenced. In this situation, the Regulator is required to assess and make a decision in relation to the WOMP, in accordance with the *amended* Wells Regulations. Given the new content requirements and acceptance criteria that are inserted by the Regulation, there is a strong likelihood that the submitted WOMP will not meet the criteria for acceptance by the Regulator. However, if the Regulator is not reasonably satisfied that the WOMP meets the acceptance criteria, new subregulation 5.32(2) ensures that the Regulator must give the titleholder at least one reasonable opportunity to modify and resubmit the WOMP in accordance with the amended Wells Regulations. This is the case even if one or more opportunities to modify and resubmit the WOMP had been given to the titleholder during any assessment of the WOMP that took place before commencement of the Regulation.

#### *Regulation 5.33*

On commencement of the Regulation, previous Division 4 of the Wells Regulations (which related to variations of a WOMP) is repealed, and no new variations can be submitted to the Regulator. However, new regulation 5.33 deals with situations in which a titleholder had applied under the previous Wells Regulations for acceptance of a variation of a WOMP before commencement of the Regulation, but the Regulator had not yet decided whether to accept or reject the variation when the Regulation commenced. In this situation, the Regulator is required to assess and make a decision in relation to the variation, in accordance with the *previous* Wells Regulations (i.e. *before* they were amended by the Regulation).

New subregulation 5.33(2) clarifies that if the variation is accepted, the WOMP that is continued in force under subregulation 5.31(1) will continue in force as varied. However,

acceptance of the variation does not constitute a revision of the WOMP for the purposes of new subregulations 5.31(3), (5), (6) and (7) (discussed above). In other words, a titleholder is still required to submit a proposed revision of the WOMP within two years of commencement of the Regulation, either as required under new Division 4 or under new subregulation 5.31(5), to ensure that the WOMP (if accepted by the Regulator) will not cease to be in force two years after commencement of the Regulation (or later if paragraph 5.31(7)(b) applies).

If the variation of the WOMP is rejected, the WOMP that is continued in force under subregulation 5.31(1) will continue in force as though the variation had not been submitted.

New subregulation 5.33(3) applies if, before commencement of the Regulation, the Regulator had given a titleholder a notice under previous regulation 5.14 of the Wells Regulations requiring the titleholder to vary its WOMP, and the titleholder had not submitted a variation for acceptance by the time the Regulation commenced. The notice continues to apply, but is taken to be a notice requiring a *revision* of the WOMP, as though it had been given by the Regulator under regulation 5.11 of the amended Wells Regulations. The titleholder will therefore be required to submit a proposed revision of the WOMP that complies with the requirements of the amended Wells Regulations, and the Regulator will assess and make a decision in relation to the proposed revision in accordance with the amended Wells Regulations. If the proposed revision is subsequently accepted, new subregulation 5.31(6) will not apply, so the WOMP will not cease to be in force after two years from commencement of the Regulation. If the proposed revision is refused, the WOMP as in force before the proposed revision was submitted continues in force, but the titleholder will need to submit another proposed revision of the WOMP (and have the proposed revision accepted by the Regulator) to ensure that the WOMP will not cease to be in force after two years as a result of new subregulation 5.31(6).

New regulation 5.12 applies so that a titleholder can give an objection to the Regulator in relation to the requirement to submit a proposed revision, including in relation to the date by which the titleholder must submit the proposed revision. New subregulation 5.12(2) provides that the objection must be made within 21 days after receiving the notice, or the Regulator can allow a longer period for the titleholder to make the objection.

#### *Regulation 5.34*

New regulation 5.34 applies to wells for which there is no accepted WOMP in force for any activity relating to the well immediately before the time of commencement of the Regulation, and where the well has, not been permanently abandoned before the commencement of the Regulation. The intent of this regulation is to capture ‘heritage wells’ – those wells that have been suspended but do not have an accepted WOMP in force. Prior to the commencement of this Regulation, no WOMP has been required to be in force for such wells. One of the key objectives of the amendments made by the Regulation is to ensure that there is a WOMP in force for each well during the entire life of the well (i.e. until the well has been permanently abandoned in accordance with the WOMP), including any periods when there is not a well activity being undertaken in relation to the well. To ensure that, after the commencement of the Regulation, there will be a WOMP in force for all wells that have not been permanently abandoned, a titleholder that has one or more ‘heritage wells’ in its title area is therefore required to submit a WOMP in relation to the well no later than 12 months after the commencement of the Regulation (i.e. before 1 January 2017).

**Item [55] – Paragraph 12.05(1)(b)**

This item amends paragraph 12.05(1)(b) of the Principal Regulations to omit the reference to a “petroleum project inspector” and substitute it with “NOPSEMA inspector”. Amendments to the OPGGS Act made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013* have removed petroleum project inspectors from the OPGGS Act. Instead, NOPSEMA has the ability to appoint “NOPSEMA inspectors” to monitor and investigate compliance by persons with their petroleum-related obligations under the OPGGS Act and regulations.

No change is made to the reference to a greenhouse gas project inspector, as the relevant powers in relation to greenhouse gas operations continue to be exercisable by greenhouse gas project inspectors under the OPGGS Act.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015**

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Regulation**

The Regulation makes various amendments to Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the Wells Regulations) and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* to improve the regulatory framework for offshore wells and well activities in Commonwealth waters by implementing the findings of a review of the Wells Regulations.

Broadly, the amendments made by the Regulation achieve the following purposes:

- Ensure that the remit of the regulatory regime encompasses the entire life of a well, and not just standalone well activities;
- Ensure that the well operations management plan (WOMP) is the sole permissioning document for the well and well activities, so that individual well activity approvals are longer required. Well activity approvals are instead replaced with a well activity notification scheme;
- Increase consistency, where appropriate, between the regulatory processes under the Wells Regulations and the processes set out in the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, to improve clarity and reduce regulatory burden for titleholders; and
- Allow flexibility for industry in how it achieves compliance, and ensure regulation will be able to adapt to changing technology and innovation, by maintaining an objectives-based approach to regulation.

**Human rights implications**

The Regulation engages the following human rights:

- The presumption of innocence.

The amendments in Schedule 1 to this Regulation engage the right to be presumed innocent until proved guilty, according to the law in article 14(2) of the International Convention on Civil and Political Rights due to:

- Introduction of three new offences of strict liability;
- Continuation of two offences of strict liability, with the repeal of associated defences;

- Amendment of an offence provision to expand its scope so that it is also an offence of strict liability for a titleholder to not comply conditions for acceptance of a WOMP;
- Amendment of an offence provision to include a defence that places an evidential burden on the defendant.

Article 14(2) imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. This right may be subject to permissible limitations where those limitations are provided by law and non-arbitrary. In order for limitations to be non-arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

### Strict liability

The Regulation introduces new offences of strict liability in regulation 5.05 (Requirement to undertake activities in accordance with well operations management plan), 5.26 (requirement to notify the Regulator of a reportable incident in relation to a well in a title area), regulation 5.26A (requirement to give a written report of a reportable incident in relation to a well in the title area to the Regulator) and regulation 5.26B (requirement for titleholder to store a copy of a written report given to the Regulator under regulation 5.26A in a way that makes retrieval of the report reasonably practicable).

It also continues existing offences of strict liability in regulation 5.04 (requirement for a titleholder to have a WOMP in force that applies to a well activity in order to undertake that activity) and regulation 5.05 (requirement for a titleholder to undertake a well activity in accordance with the requirements of the WOMP in force for the activity); however, defences that previously applied in relation to those offences have been repealed.

#### 1) Legitimate objective

Strict liability has been applied to these offence provisions to enhance the effectiveness of the provisions in deterring certain conduct, and thereby reduce the likelihood of non-compliance which could have potentially severe consequences (e.g. in the event of a failure of well integrity).

#### 2) Reasonable, necessary and proportionate response

Given the nature of offshore petroleum and greenhouse gas operations, there is a risk of potentially severe consequences if titleholders fail to comply with their regulatory obligations. In addition, the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements make it extremely difficult to prove intent. Application of strict liability to the relevant offence provisions is therefore necessary to ensure that the relevant regulations can be enforced more effectively, and thereby improve compliance with the regulatory regime. This is consistent with the principles outlined in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011* (the Guide), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

The penalty imposed for failure to comply with regulation 5.26B (30 penalty units) is consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

The penalty imposed for failure to comply with subregulations 5.05(1) and subregulation 5.05(1A), and regulations 5.26 and 5.26A is 80 penalty units. It is appropriate to apply this penalty, noting that it is higher than the preference stated in the Guide for a maximum of 60 penalty units for strict liability offences. A penalty of 80 penalty units has been applied to these offences because of the relatively serious nature of a failure to comply. For example, if the Regulator is not notified of a reportable incident, the Regulator would not be made aware of, and have the ability to oversight, an incident that could result in potentially serious safety and environmental consequences. The potential for serious consequences resulting from a breach of these provisions justifies the application of a higher penalty. In addition, offshore resources activities, as a matter of course, require a very high level of expenditure. Therefore, by comparison, a smaller financial penalty would be an ineffective deterrent.

The previous defence to offences against regulation 5.04 and 5.05 applied in the event of an emergency in which there was a likelihood of injury, significant discharge of fluids from a well, or damage to a natural resource. The defence has been repealed because the new content requirements for a WOMP require the inclusion of arrangements for responding to a loss of well integrity. In the event of an emergency, the titleholder should therefore act in accordance with the response arrangements in its WOMP. However, to allow some flexibility for titleholders to respond to an emergency in a way not covered by a WOMP if necessary (for example, if there is an incident that was not foreseeable when the WOMP was developed), new subregulation 5.05(3) provides a new defence, to the effect that a titleholder does not commit an offence under regulation 5.05 if the Regulator has consented in writing to the titleholder undertaking the activity in a specified manner, and the titleholder undertakes the activity in that manner.

In terms of the right to the presumption of innocence as afforded to *individuals*, the reality is that in the offshore regulatory regime investigations and prosecutions are conducted largely, if not solely, in relation to companies, not individuals. Prosecutions to date have only been in relation to companies, and it is not anticipated that this regulatory approach would change in the future given the nature of the industry and the requirements imposed.

#### Placement of evidential burden on a defendant

The Regulation introduces a new subregulation 5.05(3), which makes it a defence to a prosecution for an offence against subregulation 5.05(1) (failure by a titleholder to undertake a well activity in accordance with the requirements of the WOMP in force for the activity) if the Regulator has consented in writing to the titleholder undertaking the activity in a specified manner, and the titleholder undertakes the activity in that manner. The titleholder would bear an evidential burden in relation to the question whether the Regulator has given consent to undertake the activity in a specified manner, and the titleholder has undertaken the activity in that manner.

1) Legitimate objective

Placing an evidential burden on the defendant in this case would ensure that a titleholder that asserts it has undertaken a well activity in a manner that has been consented to by the Regulator bears the evidential burden of proving that matter.

2) Reasonable, necessary and proportionate response

The circumstances of the defence (i.e. whether the titleholder has undertaken a well activity in a manner that has been consented to by the Regulator) are likely to be exclusively within the knowledge of the titleholder. This is particularly the case given the remote nature of offshore petroleum and greenhouse gas operations. It is therefore reasonable to require the defendant to adduce evidence in relation to this defence.

This is consistent with the Guide, which states that where the facts of a defence are peculiarly within the defendant's knowledge, it may be appropriate for the burden of proof to be placed on the defendant.

A legal burden has not been placed on the defendant; if the defendant discharges its evidential burden, the prosecution will still be required to disprove the matters raised by the defendant beyond reasonable doubt.

In terms of the right to the presumption of innocence as afforded to *individuals*, the reality is that in the offshore regulatory regime investigations and prosecutions are conducted largely if not solely in relation to companies, not individuals. Prosecutions to date have only been in relation to companies, and it is not anticipated that this regulatory approach would change in the future given the nature of the industry and the requirements imposed.

**Conclusion**

The Regulation is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.